

Message Text

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ORIGIN L-02

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ERDA-05 CIAE-00 H-02 INR-07 NSAE-00 OIC-02 OMB-01

PA-01 PM-03 PRS-01 SAJ-01 SAM-01 SP-02 SS-15 TRSE-00

DODE-00 NSC-05 ACDA-05 BIB-01 NSCE-00 SSO-00 USIE-00

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FM SECSTATE WASHDC

TO USMISSION GENEVA IMMEDIATE

INFO AMEMBASSY BONN

AMEMBASSY COPENHAGEN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO

C O N F I D E N T I A L STATE 137522

E.O. 11652: GDS

TAGS: CSCE, PFOR, XG

SUBJECT: CSCE: DRAFT OF EC-NINE REVISION OF DANISH
FOLLOW-UP TEXT

REFS: (A) GENEVA 4232, (B) GENEVA 4233, (C) GENEVA 4308

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1. IN RESPONSE TO DELEGATION'S REQUEST (REFS A AND C)

FOR DEPT REACTION TO EC-9 DRAFT REVISION OF DANISH FOLLOW-UP TEXT CONTAINED IN REF B, WE HAVE NO OBJECTION TO ECE AND UNESCO REFERENCES IN TEXT, THOUGH WE WOULD PREFER A MORE GENERAL FORMULATION WHICH MAKES NO REFERENCE TO SPECIFIC INSTITUTIONS. WE ALSO CAN ACCEPT PARA 2 PROVISION TO THE EFFECT THAT FOLLOW-UP MEETINGS WOULD ASSESS THE "STATE OF RELATIONS AMONG THE PARTICIPATING STATES IN GENERAL IN THE CONTEXT OF THE MATTERS DEALT WITH BY THE CONFERENCE." THOUGH WE WOULD GREATLY PREFER A FOLLOW-UP MANDATE WHICH IS LESS OPEN-ENDED, WE ARE PREPARED TO FOLLOW EC-9 LEAD IN ATTEMPTING TO MEET NEUTRALS AND SOVIETS PART WAY.

2. IN RESPONSE TO PARA 3(B) OF REFTTEL C, DEPT SEES THREE POTENTIAL LEGAL PROBLEMS WITH TEXT. WE EXPECT THAT DANISH TEXT WILL UNDERGO SUBSTANTIAL REVISION IN THE COURSE OF NEGOTIATIONS WITH NEUTRALS AND SOVIETS AND

WOULD EXPECT THAT DELEGATION WILL HAVE AMPLE OPPORTUNITY TO WORK TOWARD ACHIEVING THE FOLLOWING:

A. FOLLOW-UP TEXT SHOULD NOT APPEAR TO CONFER LEGALLY BINDING STATUS ON CONFERENCE RESULTS. WE SHARE DELEGATION'S CONCERN THAT COMMITMENT TO "ENSURE" THAT CONFERENCE "DECISIONS" WILL BE "CARRIED OUT" OR "IMPLEMENTED" MAY GO TOO FAR IN THIS REGARD. WE BELIEVE THAT, SINCE TIME OF ORIGINAL DRAFTING OF DANISH PAPER, ALLIES HAVE COME TO REALIZE LEGAL LEVEL OF COMMITMENT IS A PROBLEM AND THAT, DESPITE DESIRE TO HOLD SOVIET FEET TO FIRE, WE CANNOT HAVE IT BOTH WAYS. PARA 1 FORMULATIONS WHICH WOULD INDICATE A HIGH DEGREE OF MORAL BUT NOT LEGAL COMMITMENT WOULD BE:

(A) "1. INTEND TO TAKE STEPS IN THE PERIOD FOLLOWING THE CONFERENCE TO CARRY OUT ITS RESULTS:" OR

(B) "1. ARE RESOLVED TO ENSURE, IN THE PERIOD FOLLOWING THE CONFERENCE, THAT ITS RESULTS ARE CARRIED OUT:"

B. FOLLOW-UP TEXT SHOULD NOT, IF POSSIBLE, BE A LEGALLY CONFIDENTIAL

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BINDING AGREEMENT. THOUGH WE HAVE NO PROBLEMS CONCERNING COMPETENCE OF THE EXECUTIVE TO CONCLUDE AN AGREEMENT TO ATTEND POST CSCE MEETINGS, WE HAVE TAKEN THE POSITION IN CONGRESSIONAL TESTIMONY THAT CSCE WILL PRODUCE NO LEGAL AGREEMENTS AND WE WOULD LIKE TO OBTAIN SUCH A RESULT. IN THE ABSENCE OF A MAXI-PREAMBLE OR PREAMBLE STATEMENT THAT TEXT SETS FORTH ONLY THE INTENTION OF THE PARTIES, PRESENT TEXT WOULD BE VIEWED UNDER U.S.

PRACTICE AS AN AGREEMENT. AMENDMENTS TO PARA 1 OF TEXT DESCRIBED ABOVE WOULD BE HELPFUL IN REMOVING LANGUAGE IMPLYING LEGAL COMMITMENT. PARA 2 SHOULD ALSO BE AMENDED TO COMPLY WITH NORMAL PRACTICE, IN TERMS OF A DECISION TO CONVENE RATHER THAN ONE TO ATTEND, ALONG THE FOLLOWING LINES: "IN 1977, A MEETING OF SENIOR OFFICIALS OF THE PARTICIPATING STATES WILL BE CONVENED IN . . . BY THE GOVERNMENT OF . . ., WITH A VIEW . . . ETC;" OR, PREFERABLY, "REQUEST THE GOVERNMENT OF . . . TO CONVENE A MEETING OF SENIOR OFFICIALS OF THE PARTICIPATING STATES IN . . ., IN 1977 WITH A VIEW . . . ETC."

C. FINAL SENTENCE OF TEXT ON ASSUMING COSTS OF THE FOLLOW-UP SHOULD BE MADE "SUBJECT TO ANY REQUISITE LEGISLATIVE AUTHORIZATIONS AND APPROPRIATIONS." KISSINGER

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